

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 488**

4 (By Senators Stollings, Foster, Hall, Wills, Snyder, Kessler  
5 (Acting President), Jenkins, Plymale and Miller)

6 \_\_\_\_\_  
7 [Originating in the Committee on Health and Human Resources;  
8 reported February 17, 2011.]  
9 \_\_\_\_\_

10  
11 A BILL to repeal §16-3C-7 of the Code of West Virginia, 1931, as  
12 amended; and to amend and reenact §16-3C-1, §16-3C-2 and §16-  
13 3C-3 of said code, all relating to repealing the authority of  
14 the Department of Corrections to conduct AIDS-related study;  
15 providing for AIDS-related testing and confidentiality of  
16 records; providing definitions; who may request testing;  
17 confidentiality of records; and providing when disclosure is  
18 permitted.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §16-3C-7 of the Code of West Virginia, 1931, as amended,  
21 be repealed; and that §16-3C-1, §16-3C-2 and §16-3C-3 of said code  
22 be amended and reenacted, all to read as follows:

23 **ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS**  
24 **CONFIDENTIALITY ACT.**

25 **§16-3C-1. Definitions.**

26 When used in this article:

27 (a) "AIDS" means acquired immunodeficiency syndrome.

28 ~~(b) "ARC" means AIDS-related complex.~~

1       ~~(c)~~ (b) "Bureau" means the Bureau ~~of~~ for Public ~~health~~ Health.

2       ~~(d)~~ (c) "Commissioner" means the commissioner of the Bureau ~~of~~  
3 for Public Health.

4       (d) "Convicted" includes pleas of guilty and pleas of nolo  
5 contendere accepted by the court having jurisdiction of the  
6 criminal prosecution, a finding of guilty following a jury trial or  
7 a trial to a court and an adjudicated juvenile offender as defined  
8 in sections two and four, article one, chapter forty-nine of this  
9 code.

10       (e) "Department" means the State Department of Health and  
11 Human Resources.

12       (f) "Funeral director" ~~shall have~~ has the same meaning  
13 ascribed to such term in section ~~four~~ three, article six, chapter  
14 thirty of this code.

15       ~~(g) "Convicted" includes pleas of guilty and pleas of nolo~~  
16 ~~contendere accepted by the court having jurisdiction of the~~  
17 ~~criminal prosecution, a finding of guilty following a jury trial or~~  
18 ~~a trial to a court, and an adjudicated juvenile offender as defined~~  
19 ~~in section three, article five-b, chapter forty-nine of this code.~~

20       ~~(h)~~ (g) "Funeral establishment" ~~shall have~~ has the same  
21 meaning ascribed to ~~such~~ that term in section ~~four~~ three, article  
22 six, chapter thirty of this code.

23       ~~(i)~~ (h) "HIV" means the human immunodeficiency virus  
24 identified as the causative agent of AIDS.

25       ~~(j)~~ (i) "HIV-related test" means a test for the HIV antibody  
26 or antigen or any future valid test approved by the bureau, the  
27 federal drug administration or the ~~centers for disease control~~  
28 Centers for Disease Control and Prevention.

1       ~~(k)~~ (j) "Health facility" means a hospital, nursing home,  
2 physician's office, clinic, blood bank, blood center, sperm bank,  
3 laboratory or other health care institution.

4       ~~(l)~~ (k) "Health care provider" means any physician, dentist,  
5 nurse, paramedic, psychologist or other person providing medical,  
6 dental, nursing, psychological or other health care services of any  
7 kind.

8       (l) "Health Information Exchange" means the electronic  
9 movement of health-related information in accord with law and  
10 nationally recognized standards.

11       (m) "High risk behavior" means behavior by a person including,  
12 but not limited to: (i) Unprotected sex with a person who is  
13 living with HIV; (ii) unprotected sex in exchange for money or  
14 drugs; (iii) multiple partners or anonymous unprotected sex or  
15 needle sharing partners; (iv) diagnosis of a sexually transmitted  
16 disease; or (v) unprotected sex or sharing injecting equipment in  
17 a high HIV prevalence setting or with a person who is living with  
18 HIV.

19       ~~(n)~~ (n) "Infant" means a person under six years of age.

20       ~~(n)~~ (o) "Medical or emergency responders" means paid or  
21 volunteer firefighters, law-enforcement officers, emergency medical  
22 technicians, paramedics, or other emergency service personnel,  
23 providers or entities acting within the usual course of their  
24 duties; good samaritans and other nonmedical and nonemergency  
25 personnel providing assistance in emergencies; funeral directors;  
26 health care providers; commissioner of the Bureau ~~of~~ for Public  
27 Health; and all employees thereof and volunteers associated  
28 therewith.

1       ~~(o)~~ (p) "Patient" or "test subject" or "subject of the test"  
2 means the person upon whom a HIV test is performed, or the person  
3 who has legal authority to make health care decisions for the test  
4 subject.

5       (q) "Permitted purpose" is a disclosure permitted by the  
6 Health Insurance Portability and Accountability Act of 1996 as  
7 amended, or a disclosure consented to or authorized by a patient or  
8 test subject.

9       ~~(p)~~ (r) "Person" includes any natural person, partnership,  
10 association, joint venture, trust, public or private corporation or  
11 health facility.

12       ~~(q)~~ (s) "Release of test results" means a ~~written~~  
13 ~~authorization for permitted or authorized~~ disclosure of HIV-  
14 related test results. ~~that is signed, dated and specifies to whom~~  
15 ~~disclosure is authorized and the time period the release is to be~~  
16 ~~effective.~~

17       ~~(r)~~ (t) "Significant exposure" means:

18       (1) Exposure to blood or body fluids through needlestick,  
19 instruments, sharps, surgery or traumatic events; or

20       (2) Exposure of mucous membranes to visible blood or body  
21 fluids, to which universal precautions apply according to the  
22 national ~~centers for disease control~~ Centers for Disease Control  
23 and Prevention, and laboratory specimens that contain HIV (e.g.  
24 suspensions of concentrated virus); or

25       (3) Exposure of skin to visible blood or body fluids, when the  
26 exposed skin is chapped, abraded or afflicted with dermatitis or  
27 the contact is prolonged or involving an extensive area.

28       ~~(s)~~ (u) "Source patient" means any person whose body fluids

1 have been the source of a significant exposure to a medical or  
2 emergency responder.

3 (v) "Targeted testing" means performing an HIV-related test  
4 for sub-populations at higher risk, typically defined on the basis  
5 of behavior, clinical or demographic characteristics.

6 ~~(t)~~ (w) "Victim" means the person or persons to whom  
7 transmission of bodily fluids from the perpetrator of the crimes of  
8 sexual abuse, sexual assault, incest or sexual molestation occurred  
9 or was likely to have occurred in the commission of such crimes.

10 **§16-3C-2. Testing.**

11 (a) HIV-related testing on a voluntary basis should be  
12 recommended ~~may be requested by a~~ any healthcare provider in a  
13 health facility as part of a routine screening for treatable  
14 conditions and as part of routine prenatal and perinatal care. A  
15 physician, dentist, nurse practitioner, nurse midwife, physician  
16 assistant or the commissioner may also request targeted testing for  
17 any of the following:

18 (1) When there is cause to believe that the test could be  
19 positive. Persons who engage in high risk behavior should consent  
20 to be screened for HIV at least annually;

21 (2) When there is cause to believe that the test could provide  
22 information important in the care of the patient; or

23 (3) When there is cause to believe that the results of HIV-  
24 testing of samples of blood or body fluids from a source patient  
25 could provide information important in the care of medical or  
26 emergency responders or other persons identified in regulations  
27 proposed by the department for approval by the Legislature in  
28 accordance with the provisions of article three, chapter twenty-

1 nine-a of this code: *Provided*, That the source patient whose blood  
2 or body fluids is being tested pursuant to this section must have  
3 come into contact with a medical or emergency responder or other  
4 person in such a way that a significant exposure has occurred;

5 (4) ~~When any person voluntarily consents to the test~~ there is  
6 no record of any HIV-related testing during pregnancy and the woman  
7 presents for labor and delivery.

8 (b) ~~The requesting physician, dentist or the commissioner~~  
9 ~~shall provide the patient with written information in the form of~~  
10 ~~a booklet or pamphlet prepared or approved by the bureau or, in the~~  
11 ~~case of persons who are unable to read, shall either show a video~~  
12 ~~or film prepared or approved by the bureau to the patient, or read~~  
13 ~~or cause to be read to the patient the information prepared or~~  
14 ~~approved by the bureau which contains the following information~~ A  
15 patient voluntarily consents to the test as follows:

16 (1) ~~An explanation of the test, including its purpose,~~  
17 ~~potential uses, limitations, the meaning of its results and any~~  
18 ~~special relevance to pregnancy and prenatal care~~ The patient is  
19 informed either orally or in writing that HIV-related testing will  
20 be performed as part of their routine care, that HIV-related  
21 testing is voluntary and that the patient may decline HIV-related  
22 testing (opt-out);

23 (2) ~~An explanation of the procedures to be followed~~ The  
24 patient is informed that the patient's general consent for medical  
25 care includes consent for HIV-related testing;

26 (3) ~~An explanation that the test is voluntary and may be~~  
27 ~~obtained anonymously~~ If a patient opts-out of HIV-related testing,  
28 the patient is informed when the health care provider in the

1 provider's professional opinion believes HIV-related testing is  
2 recommended, that HIV-related testing may be obtained anonymously  
3 at a local or county health department;

4 ~~(4) An explanation that the consent for the test may be~~  
5 ~~withdrawn at any time prior to drawing the sample for the test and~~  
6 ~~that such withdrawal of consent may be given orally if the consent~~  
7 ~~was given orally, or shall be in writing if the consent was given~~  
8 ~~in writing;~~

9 ~~(5) An explanation of the nature and current knowledge of~~  
10 ~~asymptomatic HIV infection, ARC and AIDS and the relationship~~  
11 ~~between the test result and those diseases; and~~

12 ~~(6) Information about behaviors known to pose risks for~~  
13 ~~transmission of HIV infection.~~

14 ~~(c) A person seeking an HIV-related test who wishes to remain~~  
15 ~~anonymous has the right to do so, and to provide written, informed~~  
16 ~~consent through use of a coded system with no linking or individual~~  
17 ~~identity to the test requests or results. A health care provider~~  
18 ~~who does not provide HIV-related tests on an anonymous basis shall~~  
19 ~~refer such a person to a test site which does provide anonymous~~  
20 ~~testing, or to any local or county health department which shall~~  
21 ~~provide for performance of an HIV-related test and counseling.~~

22 (c) For any person seeking an HIV-related test in a local or  
23 county health department or other HIV test setting provided by the  
24 commissioner, who wishes to remain anonymous has the right to do  
25 so, and to provide written informed consent through use of a coded  
26 system with no linking of individual identity to the test request  
27 or results.

28 ~~(d) At the time of learning of any test result, the patient~~

1 ~~shall be provided with counseling or referral for counseling for~~  
2 ~~copmg with the emotional consequences of learning any test result.~~  
3 ~~This may be done by brochure or personally, or both.~~

4 ~~(e)~~ (d) No ~~consent for option to opt-out of HIV-related~~  
5 testing is required and the provisions of subsection (a) and (b) of  
6 this section do not apply for the following:

7 (1) A health care provider or health facility performing an  
8 HIV-related test on the donor or recipient when the health care  
9 provider or health facility procures, processes, distributes or  
10 uses a human body part (including tissue and blood or blood  
11 products) donated for a purpose specified under the uniform  
12 anatomical gift act, or for transplant recipients, or semen  
13 provided for the purpose of artificial insemination and such test  
14 is necessary to assure medical acceptability of a recipient or such  
15 gift or semen for the purposes intended;

16 (2) The performance of an HIV-related test in documented bona  
17 fide medical emergencies, as determined by a treating physician  
18 taking into account the nature and extent of the exposure to  
19 another person, when the subject of the test is unable or unwilling  
20 to grant or withhold consent, and the test results are necessary  
21 for medical diagnostic purposes to provide appropriate emergency  
22 care or treatment to a medical or emergency responder, or any other  
23 person who has come into contact with a source patient in such a  
24 way that a significant exposure necessitates HIV-testing or to a  
25 source patient who is unable to consent in accordance with  
26 ~~regulations~~ rules proposed by the department for approval by the  
27 Legislature in accordance with article three, chapter twenty-nine-a  
28 of this code: *Provided, That necessary treatment may not be*



1 withheld pending HIV test results: *Provided, however, That all*  
2 sampling and HIV-testing of samples of blood and body fluids,  
3 without the ~~expressed written consent of the test subject~~  
4 opportunity for the source patient or patient's representative to  
5 opt-out of the testing, shall be through the use of a pseudonym and  
6 in accordance with ~~regulations~~ rules proposed by the department for  
7 approval by the Legislature in accordance with article three,  
8 chapter twenty-nine-a of this code: ~~*Provided further, That the*~~  
9 ~~department shall propose emergency rules pursuant to the provisions~~  
10 ~~of section fifteen, article three, chapter twenty nine a of this~~  
11 ~~code on or before September 1, 1998, addressing such matters as,~~  
12 ~~but not limited to:~~

13 ~~(A) Sampling and testing of blood and body fluids for HIV-~~  
14 ~~related infections including: (i) The taking of samples from~~  
15 ~~source patients; (ii) testing samples; (iii) confidentiality; (iv)~~  
16 ~~documentation; (v) post test counseling; and (vi) notices to the~~  
17 ~~department by health care providers of: (I) Test results found to~~  
18 ~~be positive and situations where sampling; and (II) testing was~~  
19 ~~performed without the written consent of the test subject; and~~

20 ~~(B) Costs associated with sampling, testing, counseling,~~  
21 ~~initial prophylactic treatment and compliance with this article:~~  
22 ~~*Provided, That: (i) The ordering of samples of blood or body*~~  
23 ~~fluids for HIV-test or testing of available samples by: (I) A~~  
24 ~~treating physician of a medical or emergency responder; or (II) a~~  
25 ~~treating physician of the source patient; and (ii) the disclosure~~  
26 ~~of the results of HIV-testing of the source patient, in accordance~~  
27 ~~with regulations proposed by the department for approval by the~~  
28 ~~Legislature pursuant to article three, chapter twenty nine a of~~

~~1 this code, shall be deemed within acceptable standards of medical  
2 care in the State of West Virginia and shall not create a legal  
3 cause of action on the part of the source patient against: (i) The  
4 treating physician of the medical or emergency responder; or (ii)  
5 the treating physician of the source patient; or (iii) any health  
6 care provider or laboratory assisting such treating physicians.~~

7 (3) The performance of an HIV-related test for the purpose of  
8 research if the testing is performed in a manner by which the  
9 identity of the test subject is not known and may not be retrieved  
10 by the researcher.

11 ~~(f)~~ (e) Mandated testing:

12 (1) The performance of any HIV-related testing that is or  
13 becomes mandatory by court order or other legal process described  
14 herein ~~shall~~ does not require consent of the subject but will  
15 include counseling.

16 (2) The court having jurisdiction of the criminal prosecution  
17 shall order that an HIV-related test be performed on any persons  
18 ~~convicted of~~ charged with any of the following crimes or offenses:

19 (i) Prostitution; or

20 (ii) Sexual abuse, sexual assault, incest or sexual  
21 molestation.

22 (3) HIV-related tests performed on persons ~~convicted of~~  
23 charged with prostitution, sexual abuse, sexual assault, incest or  
24 sexual molestation shall be confidentially administered by a  
25 designee of the bureau or the local or county health department  
26 having proper jurisdiction. The commissioner may designate health  
27 care providers in regional jail facilities to administer HIV-  
28 related tests on such ~~convicted~~ persons if he or she ~~deems~~

1 determines it necessary and expedient.

2       (4) When the director of the department knows or has reason to  
3 believe, because of medical or epidemiological information, that a  
4 person, including, but not limited to, a person such as an IV drug  
5 abuser, or a person who may have a sexually transmitted disease, or  
6 a person who has sexually molested, abused or assaulted another,  
7 has HIV infection and is or may be a danger to the public health,  
8 he or she may issue an order to:

9       (i) Require a person to be examined and tested to determine  
10 whether the person has HIV infection;

11       (ii) Require a person with HIV infection to report to a  
12 qualified physician or health worker for counseling; and

13       (iii) Direct a person with HIV infection to cease and desist  
14 from specified conduct which endangers the health of others.

15       (5) A person convicted of ~~such~~ the offenses described in this  
16 section shall be required to undergo HIV-related testing and  
17 counseling immediately upon conviction and the court having  
18 jurisdiction of the criminal prosecution ~~shall~~ may not release ~~such~~  
19 the convicted person from custody and shall revoke any order  
20 admitting the defendant to bail until HIV-related testing and  
21 counseling have been performed. The HIV-related test result  
22 obtained from the convicted person is to be transmitted to the  
23 court and, after the convicted person is sentenced, made part of  
24 the court record. If the convicted person is placed in the custody  
25 of the Division of Corrections, the court shall transmit a copy of  
26 the convicted person's HIV-related test results to the Division of  
27 Corrections. The HIV-related test results shall be closed and  
28 confidential and disclosed by the court and the bureau only in

1 accordance with the provisions of section three of this article.

2 ~~(6) A person charged with prostitution, sexual abuse, sexual~~  
3 ~~assault, incest or sexual molestation shall be informed upon~~  
4 ~~initial court appearance by the judge or magistrate responsible for~~  
5 ~~setting the person's condition of release pending trial of the~~  
6 ~~availability of voluntary HIV-related testing and counseling~~  
7 ~~conducted by the bureau.~~

8 ~~(7)~~ (6) The prosecuting attorney shall inform the victim, or  
9 parent or guardian of the victim, at the earliest stage of the  
10 proceedings of the availability of voluntary HIV-related testing  
11 and counseling conducted by the bureau and that his or her best  
12 health interest would be served by submitting to HIV-related  
13 testing and counseling. HIV-related testing for the victim shall  
14 be administered at his or her request on a confidential basis and  
15 shall be administered in accordance with the ~~centers for disease~~  
16 ~~control~~ Centers for Disease Control and Prevention guidelines of  
17 the United States Public Health Service in effect at the time of  
18 such request. The victim who obtains an HIV-related test shall be  
19 provided with pre and post-test counseling regarding the nature,  
20 reliability and significance of the HIV-related test and the  
21 confidential nature of the test. HIV-related testing and  
22 counseling conducted pursuant to this subsection shall be performed  
23 by the designee of the commissioner of the bureau or by any local  
24 or county health department having proper jurisdiction.

25 (8) If a person ~~receives counseling or~~ is tested under this  
26 subsection and is found to be HIV infected and the person is not  
27 incarcerated, the person shall be referred by the health care  
28 provider performing the ~~counseling or~~ testing for appropriate

1 medical care and support services. The local or county health  
2 departments or any other agency ~~providing counseling or testing~~  
3 under this subsection ~~shall~~ may not be financially responsible for  
4 medical care and support services. ~~received by a person as a result~~  
5 ~~of a referral made under this subsection.~~

6 (9) The commissioner of the bureau or his or her designees may  
7 require an HIV test for the protection of a person who was possibly  
8 exposed to HIV infected blood or other body fluids as a result of  
9 receiving or rendering emergency medical aid or who possibly  
10 received such exposure as a funeral director. Results of such a  
11 test of the person causing exposure may be used by the requesting  
12 physician for the purpose of determining appropriate therapy,  
13 counseling and psychological support for the person rendering  
14 emergency medical aid including good Samaritans, as well as for the  
15 patient, or individual receiving the emergency medical aid.

16 (10) If an HIV-related test required on persons convicted of  
17 prostitution, sexual abuse, sexual assault, incest or sexual  
18 molestation results in a negative reaction, upon motion of the  
19 state, the court having jurisdiction over the criminal prosecution  
20 may require the subject of the test to submit to further HIV-  
21 related tests performed under the direction of the bureau in  
22 accordance with the ~~centers for disease control~~ Centers for Disease  
23 Control and Prevention guidelines of the United States Public  
24 Health Service in effect at the time of the motion of the state.

25 (11) The costs of mandated testing and counseling provided  
26 under this subsection and pre and postconviction HIV-related  
27 testing and counseling provided the victim under the direction of  
28 the bureau pursuant to this subsection shall be paid by the bureau.

1       (12) The court having jurisdiction of the criminal prosecution  
2 shall order a person convicted of prostitution, sexual abuse,  
3 sexual assault, incest or sexual molestation to pay restitution to  
4 the state for the costs of any HIV-related testing and counseling  
5 provided the convicted person and the victim, unless the court has  
6 determined ~~such~~ the convicted person to be indigent.

7       (13) Any funds recovered by the state as a result of an award  
8 of restitution under this subsection shall be paid into the State  
9 Treasury to the credit of a special revenue fund to be known as the  
10 "HIV-testing fund" which is hereby created. The moneys so credited  
11 to ~~such~~ the fund may be used solely by the bureau for the purposes  
12 of facilitating the performance of HIV-related testing and  
13 counseling under the provisions of this article.

14       ~~(g)~~ (f) Premarital screening:

15       (1) Every person who is empowered to issue a marriage license  
16 shall, at the time of issuance thereof, distribute to the  
17 applicants for the license, information concerning acquired  
18 immunodeficiency syndrome (AIDS) and inform them of the  
19 availability of HIV-related testing and counseling. The  
20 informational brochures shall be furnished by the bureau.

21       (2) A notation that each applicant has received the AIDS  
22 informational brochure shall be placed on file with the marriage  
23 license on forms provided by the bureau.

24       ~~(h) (g) The commissioner of the bureau may obtain and test~~  
25 ~~specimens for AIDS or HIV infection for research or epidemiological~~  
26 ~~purposes without consent of the person from whom the specimen is~~  
27 ~~obtained if all personal identifying information is removed from~~  
28 ~~the specimen prior to testing.~~

1        ~~(i)~~ (g) Nothing in this section is applicable to any insurer  
2 regulated under chapter thirty-three of this code: *Provided, That*  
3 the commissioner of insurance shall develop standards regarding  
4 consent for use by insurers which test for the presence of the HIV  
5 antibody.

6        ~~(j)~~ (h) Whenever consent of the subject to the performance of  
7 HIV-related testing is required under this article, any such  
8 consent obtained, whether orally or in writing, shall be ~~deemed~~  
9 considered to be a valid and informed consent if it is given after  
10 compliance with the provisions of subsection (b) of this section.

11 **§16-3C-3. Confidentiality of records; permitted disclosure; no**  
12 **duty to notify.**

13        (a) No person may disclose or be compelled to disclose the  
14 identity of any person upon whom an HIV-related test is performed,  
15 or the results of such a test in a manner which permits  
16 identification of the subject of the test, except to the following  
17 persons:

18        (1) The subject of the test;

19        (2) The victim of the crimes of sexual abuse, sexual assault,  
20 incest or sexual molestation at the request of the victim or the  
21 victim's legal guardian, or of the parent or legal guardian of the  
22 victim if the victim is an infant where disclosure of the HIV-  
23 related test results of the convicted sex offender are requested;

24        (3) Any person who secures a specific release of test results  
25 executed by the subject of the test;

26        (4) A funeral director or an authorized agent or employee of  
27 a health facility or health care provider if the funeral  
28 establishment, health facility or health care provider itself is

1 authorized to obtain the test results, the agent or employee  
2 provides patient care or handles or processes specimens of body  
3 fluids or tissues and the agent or employee has a need to know ~~such~~  
4 that information: *Provided*, That ~~such~~ the funeral director, agent  
5 or employee shall maintain the confidentiality of ~~such~~ this  
6 information;

7 (5) Licensed ~~medical personnel~~ health care providers or  
8 appropriate health ~~care~~ facility personnel providing care to the  
9 subject of the test: ~~when knowledge of the test results is~~  
10 ~~necessary or useful to provide appropriate care or treatment, in an~~  
11 ~~appropriate manner~~: *Provided*, That such personnel shall maintain  
12 the confidentiality of ~~such~~ the test results and may redisclose the  
13 results only for a permitted purpose or as permitted by law. The  
14 entry on a patient's chart of an HIV-related illness by the  
15 attending or other treating physician or other health care provider  
16 ~~shall~~ may not constitute a breach of confidentiality requirements  
17 imposed by this article;

18 (6) The ~~bureau~~ Bureau or the ~~centers for disease control~~  
19 Centers for Disease Control and Prevention of the United States  
20 Public Health Service in accordance with reporting requirements for  
21 a diagnosed case of AIDS, or a related condition;

22 (7) A health facility or health care provider which procures,  
23 processes, distributes or uses: (A) A human body part from a  
24 deceased person with respect to medical information regarding that  
25 person; (B) semen provided prior to the effective date of this  
26 article for the purpose of artificial insemination; (C) blood or  
27 blood products for transfusion or injection; or (D) human body  
28 parts for transplant with respect to medical information regarding



1 the donor or recipient;

2 (8) Health facility staff committees or accreditation or  
3 oversight review organizations which are conducting program  
4 monitoring, program evaluation or service reviews so long as any  
5 identity remains anonymous; ~~and~~

6 (9) Claims management personnel employed by or associated with  
7 an insurer, health care service contractor, health maintenance  
8 organization, self-funded health plan, state-administered health  
9 care claims payer or any other payer of health care claims, where  
10 the disclosure is to be used solely for the prompt and accurate  
11 evaluation and payment of medical or related claims. Information  
12 released under this subsection is confidential and may not be  
13 released or available to persons who are not involved in handling  
14 or determining medical claims payment;

15 (10) Persons, health care providers or health facilities  
16 engaging in or providing for the exchange of protected health  
17 information among the same in order to provide health care services  
18 to the patient, including, but not limited to, disclosure through  
19 a health information exchange, disclosure and exchange within  
20 health care facilities, and disclosure for a permitted purpose,  
21 including disclosure to a legally authorized public health  
22 authority; and

23 ~~(9)~~ (11) A person allowed access to ~~said~~ the record by a court  
24 order which is issued in compliance with the following provisions:

25 (i) No court of this state may issue ~~such~~ the order unless the  
26 court finds that the person seeking the test results has  
27 demonstrated a compelling need for the test results which cannot be  
28 accommodated by other means. In assessing compelling need, the

1 court shall weigh the need for disclosure against the privacy  
2 interest of the test subject and the public interest;

3 (ii) Pleadings pertaining to disclosure of test results shall  
4 substitute a pseudonym for the true name of the test subject of the  
5 test. The disclosure to the parties of the test subject's true  
6 name shall be communicated confidentially in documents not filed  
7 with the court;

8 (iii) Before granting any such order, the court shall, if  
9 possible, provide the individual whose test result is in question  
10 with notice and a reasonable opportunity to participate in the  
11 proceedings if he or she is not already a party;

12 (iv) Court proceedings as to disclosure of test results shall  
13 be conducted in camera unless the subject of the test agrees to a  
14 hearing in open court or unless the court determines that the  
15 public hearing is necessary to the public interest and the proper  
16 administration of justice; and

17 (v) Upon the issuance of an order to disclose test results,  
18 the court shall impose appropriate safeguards against unauthorized  
19 disclosure, which shall specify the person who may have access to  
20 the information, the purposes for which the information may be used  
21 and appropriate prohibitions on future disclosure.

22 (b) No person to whom the results of an HIV-related test have  
23 been disclosed pursuant to subsection (a) of this section may  
24 disclose the test results to another person except as authorized by  
25 said subsection.

26 ~~(c) Whenever disclosure is made pursuant to this section,~~  
27 ~~except when such disclosure is made to persons in accordance with~~  
28 ~~subdivisions (1) and (6), subsection (a) of this section, it shall~~

1 ~~be accompanied by a statement in writing which includes the~~  
2 ~~following or substantially similar language: "This information has~~  
3 ~~been disclosed to you from records whose confidentiality is~~  
4 ~~protected by state law. State law prohibits you from making any~~  
5 ~~further disclosure of the information without the specific written~~  
6 ~~consent of the person to whom it pertains, or as otherwise~~  
7 ~~permitted by law. A general authorization for the release of~~  
8 ~~medical or other information is NOT sufficient for this purpose."~~

9       ~~(d)~~ (c) Notwithstanding the provisions set forth in  
10 subsections (a) through (c) of this section, the use of HIV test  
11 results to inform individuals named or identified as spouses, sex  
12 partners or contacts, or persons who have shared needles that they  
13 may be at risk of having acquired the HIV infection as a result of  
14 possible exchange of body fluids, is permitted: *Provided*, That the  
15 ~~bureau~~ Bureau shall make a good faith effort to inform spouses, sex  
16 partners, contacts or persons who have shared needles that they may  
17 be at risk of having acquired the HIV infection as a result of  
18 possible exchange of body fluids: *Provided, however*, That the  
19 ~~bureau~~ Bureau ~~shall have~~ has no notification obligations when the  
20 ~~bureau~~ Bureau determines that there has been no likely exposure of  
21 ~~such~~ these persons to HIV from the infected test subject within the  
22 ten-year period immediately prior to the diagnosis of the  
23 infection. The name or identity of the person whose HIV test  
24 result was positive is to remain confidential. Spouses, contacts,  
25 or sex partners or persons who have shared needles may be tested  
26 anonymously at the State Bureau ~~of~~ for public Health's designated  
27 test sites, or at their own expense by a health care provider or an  
28 approved laboratory of their choice. A cause of action ~~will~~ may

1 not arise against the ~~bureau~~ Bureau, a physician or other health  
2 care provider from any such notification.

3 ~~(e)~~ (d) There is no duty on the part of the physician or  
4 health care provider to notify the spouse or other sexual partner  
5 of, or persons who have shared needles with, an infected individual  
6 of their HIV infection and a cause of action ~~will~~ may not arise  
7 from any failure to make such notification. However, if contact is  
8 not made, the ~~bureau~~ Bureau will be so notified.

Note: The purpose of this bill is to revise the West Virginia  
HIV testing statute to conform with the most recent recommendations  
from the Centers for Disease Control and Prevention.

Strike-throughs indicate language that would be stricken from  
the present law, and underscoring indicates new language that would  
be added.